

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

MARY DANIELS, Individually and in her §
capacity as heir of the Estate of THEODORE §
SCHMERBER, §
Plaintiff, §
§
v. § Civil Action No. 2:07-CV-227-J
§
PATRICIA PRIOR, CARRIE JONES, DAVID §
HOUGHES, ESTHER LARIMORE, MARK §
DAVIS and JOHN DOES §
Defendants. §

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made by and between Plaintiff, Mary Daniels, Individually and in her capacity as heir of the Estate of Theodore Schmerber (APlaintiff/Daniels@), and Defendants, Patricia Prior, Carrie Jones, David Houghes, Esther Larimore, Mark Davis and John Does, Texas Tech University Health Science Center and Texas Tech University System ("Defendants"). The parties are collectively referred to herein as "The Parties."

1. Recitals

1.1 Plaintiff sued Defendants on April 7, 2008, in the United States District Court for the Northern District of Texas, Amarillo Division, federal court raising claims under 42 U.S.C. §1983, alleging violations of the Eighth Amendment to the United States Constitution and Texas Law, in connection with the suicide of her son, Theodore Schmerber, as relief, Plaintiff soughts compensatory damages and attorney=s fees, costs of court, and pre- and post- judgment interest on all amounts awarded.

1.2 Defendants genuinely dispute the legal and factual basis of the Plaintiff=s claims and defenses. Plaintiff genuinely disputes the legal and factual basis of Defendant=s claims and

defenses. Nevertheless, The Parties wish to effect a compromise and settlement of the lawsuit, and enter into this Agreement for the purpose of avoiding the further time and expenses of litigation.

1.3 In reaching this agreement, The Parties agree that nothing herein shall be deemed to be an admission of liability by these Defendants, and all liability is denied.

2. Terms of Settlement

2.1 Consideration. The consideration for this Agreement consists of the agreements and mutual releases contained herein. Based upon this reciprocal consideration, the receipt of which is hereby acknowledged, The Parties agree to settle the lawsuit as provided herein.

2.2 Defendants agree to make the following payment in full settlement of Daniels=s lawsuit against Defendants in the manner set out in paragraph 2.3:

2.2.1 Defendants shall issue a check made payable to Jeff Edwards, Evans Edwards, L. L. P. Attorneys at Law, in the amount of Thirty-five Thousand dollars (\$35,000.00).

2.3 The payments described in paragraphs 2.2 shall be tendered to Jeff Edwards, Evans Edwards, L. L. P., Attorneys at Law, on or before April 15, 2009.

2.4 Daniels acknowledges that she is not entitled to, and will not receive, any monetary payment except as referenced in paragraphs 2.2.1 of this Agreement.

2.5 The Parties will execute a Joint Stipulation of Dismissal, With Prejudice, and a proposed Order of Dismissal, With Prejudice, in the form attached hereto as "Exhibit A." Daniels, through her counsel, will file such Joint Stipulation and proposed Order within 10 days of the Effective Date of this Agreement, and will serve Defendants with a copy of the Order of Dismissal, With Prejudice.

2.6 Except as provided in paragraph 2.3, each party will pay its own costs and fees.

2.7 Daniels agrees that all liability for state or federal income and social security taxes on the amounts paid to her pursuant to this Agreement is her sole responsibility. Daniels agrees to defend, indemnify and hold the Defendants harmless against any claim or claims made against the Defendants, whether asserted against them jointly or singly, as a result of any unpaid state or federal income or social security taxes on the amounts paid to or on behalf of Daniels pursuant to this Agreement.

3. Releases

3.1 **Mary Daniels** and her respective past, present, and future agents, attorneys, heirs, administrators, successors, assigns and insurers, hereby release, acquit and discharge the **Defendants**, Patricia Prior, Carrie Jones, David Houghes, Esther Larimore, Mark Davis and John Does, Texas Tech University Health Science Center and Texas Tech University System and their respective past, present, and future agents, attorneys, heirs, administrators, Board of Regents, successors, assigns and insurers, from any and all claims, demands and causes of action arising out of or relating in any way to this matter. This release applies to all claims alleged in this suit and to all claims that could have been alleged but were not. This release is intended to be construed broadly, and applies to all claims alleged in this suit as well as all claims that could have been alleged but were not, whether known at present or discovered in the future.

3.2 **The Defendants**, Patricia Prior, Carrie Jones, David Houghes, Esther Larimore, Mark Davis and John Does, Texas Tech University Health Science Center and Texas Tech University System and their respective past, present, and future agents, attorneys, heirs, administrators, successors, assigns and insurers, hereby releases, acquit and discharge **Mary Daniels** and her respective past, present, and future agents, officials, attorneys, heirs, administrators, Board of

Regents, successors, assigns and insurers from any and all claims, demands and causes of action arising out of or relating in any way to this matter. This release applies to all claims alleged in this suit and to all claims that could have been alleged but were not. This release is intended to be construed broadly, and applies to all claims alleged in this suit as well as all claims that could have been alleged but were not, whether known at present or discovered in the future.

4. Miscellaneous Provisions

4.1 This Agreement embodies all terms and conditions of all agreements between The Parties. This agreement may be amended only by a written agreement signed by The Parties and approved under the circumstances in effect at the time of the amendment.

4.2 In the event of litigation to enforce or interpret any provision of this Agreement, exclusive venue for such litigation shall be in United States District Court of the Western District of Texas, Austin Division.

4.3 This Agreement may be executed in multiple counterparts, which taken together shall constitute a single Agreement, and when executed by all parties below shall be enforceable as to all parties to the extent allowed by law.

4.4 The Parties understand that this Agreement is subject to all necessary State approvals, including those that may be required from the appropriate officials at the Office of the Governor and at the Office of the Attorney General. The Parties mutually agree to use their best efforts to expedite the execution of the Agreement and payment of the settlement amount.

4.5 Effective Date. The Effective Date of this Agreement is the date on which the Agreement receives all necessary State approvals or the date of the latest signature to this Agreement, whichever occurs last.

Signed and dated as indicated below.

Mary Daniels
Mary Daniels
Plaintiff

4/1/09

Date

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4/1/09

Date

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Date

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Plaintiff

Date

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3-31-09